disagreements within the Communist Party; common sense and legal precedent compel the conclusion that "Marxism-Leninism", like any philosophy, means different things to different people (Brief for Petitioners Richmond and Connelly, pp. 82-91), but we can overlook these minor matters. Petitioners just must have been conspirators.

III.

CONCLUSION.

It is respectfully submitted that there is nothing in respondent's brief which presents even a challenge to the analysis contained in our opening brief. The method of argument employed by respondent parallels the manner in which respondent stated the facts: You take a piece of testimony, make an inference from it, report the inference as fact—other equally tenable inferences are put to one side; then you take another piece of testimony and repeat the process in respect to it; then another, and another; finally you put together all such inferences and claim you have built a house of guilt. We do not think the structure can withstand the winds of reason which have ever been the life breath of freedom.

Dated, October 1, 1956.

Respectfully submitted,

AUGUSTIN DONOVAN,

Attorney for Petitioners.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 8

AL RICHMOND and PHILIP MARSHALL CONNELLY,
Petitioners,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF FOR PETITIONERS.

AUGUSTIN DONOVAN,
Bank of America Building, Oakland, California,
Attorney for Petitioners.

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REPLY BRIEF FOR PETITIONERS.

In the Brief for the United States filed herein there are four pages in the Statement of the case devoted to alleged facts concerning petitioners Al Richmond and Philip Marshall Connelly (Brief for United States, pp. 65-69). The argument section contains approximately six pages dealing with the sufficiency of the evidence to sustain the charges against petitioners (*Id.* at 109-115).

We believe that close scrutiny of those pages shows that both the factual presentation and the argumenta-

tion are highly fallacious. This reply brief is directed at those fallacies.

I.

FACT AND FANCY.

Before considering the statement of facts in respondent's brief, we wish to take note of the charge that our Statement "is far from adequate," that there are "errors of omission," and that "much" of our Statement is "devoted to charges and insinuations that the testimony of the Government's witnesses . . . was in large part either consciously false or the product of faulty memory" (*Id.* at 104). Such a charge is most serious. The duty of presenting the facts to this Court in a fair and accurate fashion is not to be lightly regarded. We think, however, that examination of the two briefs and a comparison of them with the transcript in this case will demonstrate quite conclusively that the neglect in this respect rests with respondent.

Our factual presentation contains not one insinuation concerning the falsity of the Government's witnesses, though in our opinion there is much upon which such a claim might be founded. On page 10 of our brief we do point out what is at best an instance of faulty memory: The witness Lautner testified that petitioner Richmond attended the 1945 Communist Political Association-Communist Party convention; Richmond's army discharge papers, we

note, show that he was not even in the United States during this convention.

As to "errors of omission," every bit of testimony concerning petitioner which is to be found in respondent's brief also appears in ours. There are *allegations* in respondent's brief which we did not include. The reason for this, however—and this brings us to respondent's errors—is that those allegations are not reports of the testimony contained in the record but rather respondent's unfounded conclusions and inferences from the testimony. Our brief contains the testimony. Respondent's brief contains statements of conclusions, conclusions which in our opinion are mere speculations.

Thus on page 66 of respondent's brief we find this statement:

> "From September 1946 to June 1948 (A. 363, 364, 367-368), he [Richmond] was one of those whom witness Van Dorn used to take by elevator to the Party's seventh-floor San Francisco headquarters on meeting-nights of the California State and San Francisco County Boards. See *supra*, pp. 14-15."

The references which are contained in the above passage do not support the allegations of fact contained in the passage. Those references are to testimony which establish only these facts: the witness Van Dorn was asked by petitioner Schneiderman to run the elevator in the evening so that State Board meetings might be held; petitioner Yates made the same request so that County Board meetings could be held; Van Dorn complied; petitioner Richmond

took the elevator to the seventh floor on numerous evenings during the period of years that Van Dorn ran the elevator subsequent to, but not necessarily *pursuant* to, the requests of Schneiderman and Yates. Apparently respondent believes that since Board meetings occurred on *some* evenings, and since Richmond went to the seventh floor on *some* evenings, it is fair to state as a fact that Richmond attended the Board meetings, or at least to so insinuate.

In so stating the facts respondent completely neglects to mention the witness Van Dorn's testimony that two other persons asked her to run the elevator in the evening so that they might be able to go to Communist headquarters on the seventh floor (R. 7779). So far as the record shows, neither of these requests for elevator service was connected with the Board meetings. In addition, Van Dorn testified that she had received lists of the names of persons who were to attend the meetings; she named persons on those lists (R. 7793-96). Petitioner Richmond was not named. But respondent conveniently ignores these matters. Respondent ignores the innumerable possible reasons for which Richmond might have gone to Communist headquarters. But this is typical of the entire pattern of the case against petitioners. Only by drawing inference after inference, piling one atop the other, and ignoring the many conflicting and at least equally tenable inferences, was it ever possible to consider the testimony adduced at trial as evidence against petitioners.

An even more glaring gloss on the record appears at page 69 of respondent's brief:

> "From the fall of 1945 to June 1948 (A. 364, 374), Connelly was one of the group of individuals whom witness Van Dorn used to take by elevator to the Party's seventh-floor San Francisco headquarters, after checking their names from the check list supplied her, on meeting-nights of the California and San Francisco County Boards. See *supra*, pp. 14-15."

The portions of the record which respondent cites in the passage above, and which presumably contain testimony substantiating that passage, are completely devoid of such substantiation. The testimony does not show that Connelly's name was on the list in question. The testimony does not show that Connelly rode the elevator on meeting nights in question. The testimony does not even show that Connelly rode the elevator in the evening. The one and only fact which is contained in the testimony is that Connelly rode the elevator on about half a dozen occasions. How is it that respondent concludes that he rode in the evening rather than during the day? How is it that respondent concludes he was on the elevator on the meeting nights? How has respondent divined that Connelly's name was on the list referred to?

How, indeed, could respondent present to the Court such a statement of "facts" and then unabashedly make the claim that petitioners' presentation was inadequate!

Another noteworthy point in respondent's summary of the evidence occurs on page 67 of its brief. Respondent notes that in the article *Use the Press As a Key Political Weapon* (Ex. 186, p. 7, R. 1533), petitioner Richmond referred to the Communist Party's "vanguard role." The following footnote appears after the phrase "vanguard role":

> "*I.e.*; its role of leader of the proletariat in the planned revolutionary seizure of power. See *supra*, pp. 12, 44 (fn. 52), and Appendix A, *infra*, p. 158."

It seems to appear that there are three authorities to support respondent's interpretation of "vanguard role": pages 12 and 158 of the brief and footnote 52. Examination of this footnote 52, however, shows that it does nothing more than cite to pages 12 and 158. Such is the way in which authorities are multiplied. Most important, however, the contents of pages 12 and 158 in no way show that Richmond's use of the phrase "vanguard role" implied violent overthrow of Government. If one reads Richmond's article, reproduced in its entirety in Appendix B of our brief, it becomes clear that his concept of a "vanguard role" relates to the organization of large numbers of people in campaigns to influence legislation through the free expression of opinion.

Page 110 of respondent's brief contains a plain misstatement of the record. In discussing the *Daily People's World*, respondent says:

> "Its 'articles * * * reflected the attitude and the policy of the Communist Party on the various

subjects of which they spoke'; '[o]therwise, they wouldn't have been printed' (A. 18)." .

The testimony which respondent is quoting is that of the witness Saunders. Examination of this testimony shows that Saunders was speaking about the *Western Worker,* not the *Daily People's World.* Yet respondent quotes this testimony as if the witness had been speaking about the *Daily People's World.* Respondent does this in the face of testimony that the columns of the *Daily People's World* were open to non-communist writers and that articles were published which did not reflect Communist Party views (R. 11,322).

Such is the statement of the facts. Respondent's argument relies on these supposed facts. Upon this basis respondent attempts to build a structure of inferences. This argument is as unconvincing as the factual presentation is inaccurate.

II.

RESPONDENT'S "ARGUMENT".

In arguing this case in our brief we attempted to consider every bit of testimony contained in the record concerning petitioners Richmond and Connelly. Each bit of testimony was analyzed to see what possible inferences might be drawn therefrom. It was our conclusion that there is no evidence which even remotely connects petitioners with the alleged conspiracy.

We think that respondent's argument as to the sufficiency of the evidence concerning petitioners constitutes the best possible demonstration of the validity of our contentions. Nowhere has respondent even attempted to show how the testimony contained in the record points clearly and convincingly to the conclusions necessary to sustain the case against petitioners.

The argument begins on page 109 of respondent's brief. That page is devoted simply to saying that editorship of a newspaper does not insulate petitioners from the herein prosecution. We have never claimed any such insulation. We do claim that editorship does not constitute proof of participation in the alleged conspiracy.

On page 110 respondent states: "Petitioners Richmond and Connelly were definitely proved to be members of the conspiracy." Why? By what evidence? In the pages which follow respondent recites the evidence showing that petitioners were editors of the *Daily People's World* and that this newspaper was sponsored by the Communist Party; then respondent notes the evidence concerning Communist Party support of the newspaper; and finally there are various statements concerning newspapers, none of which is shown to have been known to either Richmond or Connelly. All this occurs in the space of approximately four to five pages. More than twenty pages in our brief are taken up with a detailed examination of this very same evidence (Brief for Petitioners Richmond and Connelly, pp. 60-82). We believe that it is there demonstrated that the testimony concerning

petitioners' editorship of the *Daily People's World* wholly fails to show their connection with the supposed conspiracy. The vital element of proof which is completely missing is evidence to prove that *petitioners' purpose* in working on the newspaper was in any way related to the purpose of the alleged conspiracy. Absent such proof, the evidence establishes only that petitioners worked on the paper.

As to the newspaper, itself, respondent concedes that it never contained a word of advocacy of violent revolution (Brief for United States, p. 112). But this, says respondent, is unimportant. The purpose of the paper, respondent tells us, was to gain the "sympathy of the masses," and, *of course*, such sympathy was sought "to facilitate the Party's task of forcible seizure of power" (*Ibid.*) It may be that *someone* thought of the paper in this way, but just what evidence proves that Richmond and Connelly published with such a purpose is not stated. But then evidence is not really necessary. It should be self-evident that people who publish a newspaper which is concerned with issues of the day, elections, legislation and so forth were *really* seeking to foment violent revolution.

Respondent asserts that petitioners attended meetings of the California State and San Francisco County Boards of the Communist Party. This assertion, as shown earlier in this reply brief, is merely respondent's speculation. However, even if true, what does such attendance prove? There is no evidence to show that the meetings in question were connected with